**UTUSAN MELAYU (M) BHD**

**v.**

**LIM GUAN ENG**

COURT OF APPEAL, PUTRAJAYA
RAUS SHARIF PCA
CLEMENT SKINNER JCA
AZAHAR MOHAMED JCA
[CIVIL APPLICATION NO: P-08-764-10-2012 &
CIVIL APPEAL NO: P-02(NCVC)-99-01-2012]
11 MARCH 2013

***CIVIL PROCEDURE:*** *Appeal - Leave to appeal - Application for - Defendant ordered to pay plaintiff amount of RM200,000 as damages - Whether leave required for defendant to pursue appeal - Harcharan Singh Sohan Singh v. Ranjit Kaur S Gean Singh - Interpretation of decision - Whether there was ambiguity - Whether time for determining current value of subject matter determined at time of filing claim - Whether claim in excess of RM250,000 - Courts of Judicature Act 1964, s. 68(1)(a)*

This was an application *vide* encl. 2(a) filed by the applicant ('defendant') for leave to appeal to the Court of Appeal. Briefly, the facts were that the respondent ('plaintiff'), the Chief Minister of Penang, brought an action against the defendant for damages in libel allegedly arising from material printed and published in the newspaper under the banner of Utusan Malaysia. It was the plaintiff's case that the defendant had wrongfully and with intention to defame the plaintiff published in the Utusan Malaysia an article under the title "Kebiadaban Guan Eng". At the conclusion of the trial, the High Court found that the article published by the defendant was defamatory of the plaintiff. As a result, the defendant was ordered to pay the plaintiff a single global amount as general and aggravated damages in the sum of RM200,000. Aggrieved, the defendant appealed to the Court of Appeal. A notice of appeal was duly filed with the Court of Appeal registry. However, the defendant had also filed this application for leave to appeal against the decision of the High Court. According to the defendant, the application was filed in view of the prevailing conflicting positions taken by different panels of the Court of Appeal in respect of the interpretation of the Federal Court decision in *Harcharan Singh Sohan Singh v. Ranjit Kaur S Gean Singh ('Harcharan Singh')*.

**Held (striking out defendant's application)**
**Per Raus Sharif PCA delivering the judgment of the court:**

**(1)** In the case of *Harcharan Singh*, the Federal Court found that the subject matter of the claim had been identified and its value determined at RM248,500 (below RM250,000), thus s. 68(1)(a) of the Courts of Judicature Act 1964 ('CJA') was still applicable and that leave was required before an appeal could be brought to the Court of Appeal. However, it was also held that the determining factor was not the amount recovered or the amount of the award handed down by the trial court but rather the amount or value claimed in the civil suit. Thus, there was no ambiguity with regard to the decision in *Harcharan Singh*. (paras 10, 11 & 12)

**(2)** Section 68(1)(a) of the CJA clearly provides that the time for determining the current value of the subject matter of the claim (exclusive of interest) is at the time of filing the claim and not the judgment amount granted. In the instant case, the plaintiff was claiming in excess of RM250,000. As such, there was no necessity for the defendant to apply for leave pursuant to s. 68(1)(a) of the CJA even though the judgment granted against the defendant was only RM200,000. Thus, since leave was not required for the defendant to pursue the appeal, the defendant's application was accordingly struck out. This was especially so when the notice of appeal had been duly filed at the Court of Appeal registry. (paras 12 & 13)

***Bahasa Malaysia*** *Translation Of Headnotes*

Ini adalah permohonan melalui lampiran 2(a) yang difailkan oleh defendan untuk kebenaran membuat rayuan kepada Mahkamah Rayuan. Secara ringkas, fakta-fakta adalah bahawa plaintif, Ketua Menteri Pulau Pinang, telah membawa satu tindakan terhadap defendan untuk ganti rugi libel yang didakwa berbangkit daripada bahan yang dicetak dan diterbitkan di dalam surat khabar di bawah nama Utusan Malaysia. Adalah kes plaintif bahawa defendan telah dengan salah dan dengan niat untuk memfitnah plaintif menyiarkan di dalam Utusan Malaysia satu artikel di bawah tajuk "Kebiadaban Guan Eng". Pada akhir perbicaraan, Mahkamah Tinggi mendapati bahawa artikel yang diterbitkan oleh defendan adalah memfitnah plaintif. Oleh itu, defendan diperintahkan membayar plaintif amaun RM200,000 sebagai ganti rugi am dan tambahan. Terkilan, defendan merayu ke Mahkamah Rayuan. Notis

rayuan telah difailkan dengan pejabat pendaftaran Mahkamah Rayuan. Walau bagaimanapun, defendan juga telah memfailkan permohonan bagi kebenaran untuk merayu terhadap keputusan Mahkamah Tinggi. Menurut defendan, permohonan itu telah dibuat atas beberapa keraguan memandangkan kedudukan bercanggah yang diambil oleh panel berbeza Mahkamah Rayuan berkenaan tafsiran keputusan Mahkamah Persekutuan di dalam *Harcharan Singh Sohan Singh v. Ranjit Kaur S Gean Singh ('Harcharan Singh')*.

**Diputuskan (membatalkan permohonan defendan)**
**Oleh Raus Sharif PMR menyampaikan penghakiman mahkamah:**

**(1)** Di dalam kes *Harcharan Singh*, Mahkamah Persekutuan mendapati bahawa perkara tuntutan telah dikenal pasti dan nilainya ditentukan pada RM248,500 (di bawah RM250,000), oleh itu s. 68(1)(a) Akta Mahkamah Kehakiman 1964 ('Akta') masih digunapakai dan kebenaran diperlukan sebelum rayuan boleh dibuat di Mahkamah Rayuan. Walau bagaimanapun, ia juga diputuskan bahawa faktor penentuan bukanlah amaun yang diperolehi atau amaun yang dibenarkan oleh mahkamah perbicaraan tetapi amaun atau nilai yang dituntut dalam guaman sivil. Oleh itu, tiada kesamaran berhubungan dengan keputusan dalam *Harcharan Singh*.

**(2)** Seksyen 68(1)(a) Akta dengan jelasnya memperuntukkan bahawa masa untuk menentukan nilai semasa perkara tuntutan (tidak termasuk faedah) adalah pada masa tuntutan difailkan dan bukan apabila amaun penghakiman diberi. Di dalam kes ini, tuntutan plaintif melebihi RM250,000. Oleh itu, tiada keperluan bagi defendan memohon kebenaran di bawah s. 68(1)(a) Akta walaupun penghakiman yang diberi terhadap defendan hanya RM200,000. Oleh kerana kebenaran tidak diperlukan bagi defendan untuk meneruskan rayuan, permohonan defendan sewajarnya dibatalkan. Ini adalah terutamanya apabila notis rayuan telah difailkan di pejabat pendaftaran Mahkamah Rayuan.

**Case(s) referred to:**
*Harcharan Singh Sohan Singh v. Ranjit Kaur S Gean Singh [2011] 3 CLJ 593 FC* ***(dist)***
*Lam Kong Company Ltd v. Thong Guan Co Pte Ltd [2000] 3 CLJ 769 FC* ***(refd)***
*Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor [1997] 2 CLJ 68 FC* ***(refd)***

**Legislation referred to:**
Courts of Judicature Act 1964, s. 68(1)(a)

*For the applicant - Mohana Kumar; M/s Shafie & Mohan*
*For the respondent - Jagdeep Singh Deo; M/s Karpal Singh & Co*

*[Editor's note: For the High Court judgment, please see Lim Guan Eng v. Utusan Melayu (M) Bhd [2012] 2 CLJ 619.]*

*Reported by Suhainah Wahiduddin*

## JUDGMENT

**Raus Sharif PCA:**

**[1]** This is an application *vide* encl. 2(a) filed by Utusan Melayu (M) Berhad ("the defendant") for leave to appeal to the Court of Appeal. On 25 January 2013, after hearing the parties we struck out the application. We now give our reasons.

**[2]** What had happened in this case is this: The plaintiff, the Chief Minister of Penang brought an action against the defendant for damages in libel allegedly arising from material printed and published in the newspaper under the banner of Utusan Malaysia. It was the plaintiff's case that the defendant had wrongfully and with intention to defame the plaintiff, published in the Utusan Malaysia issue of 20 December 2012 an article under the title "Kebiadaban Guan Eng".

**[3]** The defendant in the statement of defence admitted publishing the article concerning the plaintiff but contended that it was published as a response to the attack on the defendant by the plaintiff in a speech made by the plaintiff at the "Konvensyen Pakatan Rakyat Kebangsaan Kedua" held at Kepala Batas, Pulau Pinang on 19 December 2010. At the same time the defendant denied that the words complained of bore or was capable of bearing the meaning attributed to it by the plaintiff and/or it was defamatory of the plaintiff. The defendant claimed that the publication of the article was made *'bona fide'* and was a fair and relevant response to the alleged attack against the defendant by the plaintiff on 19 December 2010.

**[4]** Additionally or alternatively, it was the defendant's defence that the article was published 'on an occasion of qualified privilege at common law'.

**[5]** At the conclusion of the trial, the High Court found the article published by the defendant was defamatory of the plaintiff. As a result the plaintiff was awarded damages for libel. The defendant was ordered to pay the plaintiff a single global amount as general and aggravated damages in the sum of RM200,000 with interest on the said RM200,000 at 4% per annum from the date of the order until date of full settlement.

**[6]** Aggrieved by the High Court decision the defendant preferred an appeal to the Court of Appeal. A notice of appeal was duly filed on 11 January 2012 with the Court of Appeal registry. However, the defendant had also filed this application for leave to appeal against the decision of the High Court.

**Findings**

**[7]** At the outset, we enquired from the learned counsel for the defendant on the necessity of filing the present application when a notice of appeal has already been duly filed with the Court of Appeal registry. The learned counsel informed us that the application was filed through abundance of caution in view of the prevailing conflicting positions taken by different panels of the Court of Appeal in respect of the interpretation of the decision of the Federal Court in *Harcharan Singh Sohan Singh v. Ranjit Kaur S Gean Singh* [2011] 3 CLJ 593 (*Harcharan Singh*).

**[8]** In *Harcharan Singh* the appeal arose from the Court of Appeal's decision in striking out the appellant's appeal on the ground that the appellant had failed to obtain leave of the Court of Appeal pursuant to s. 68(1)(a) of the Courts of Judicature Act 1964 ("the CJA") which provides that:

> (1) No appeal shall be brought to the Court of Appeal on any of the following cases:
>
> (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;

**[9]** Leave to appeal was granted based on two questions of law, namely:

(i) What is the true meaning and effect of s. 68(1)(a) which provides that no appeal shall be brought to the Court of Appeal when the amount or value of the subject matter of claim (exclusive of interest) is less than RM250,000, except with leave of the Court of Appeal?

(ii) Further and/or in the alternative, at which point of time is the amount or value of the subject matter of the claim (exclusive of interest) to be determined for the purposes of s. 68(1)(a) of the CJA.

**[10]** It was argued on behalf of the appellant in that case that s. 68(1) of the CJA did not apply because the subject matter of the claim was for declaration coupled with a claim for ancillary reliefs, and therefore, no leave was required before an appeal could be brought before the Federal Court. However the Federal Court on the facts rejected the said argument and dismissed the appeal.

**[11]** The Federal Court answered the first question in the affirmative in that s. 68(1)(a) of the CJA still applies when the amount or value of the subject matter of the claim (exclusive of interest) is less than RM250,000. As for the contention that s. 68(1)(a) did not apply because of the relief sought by the appellant was for declaration, the Federal Court endorsed its earlier decision in *Lam Kong Company Ltd v. Thong Guan Co Pte Ltd* [2000] 3 CLJ 769 (*Lam Kong Company*). In *Lam Kong Company* it was held *inter alia* that item (ii) of the Court of Appeal Practice Direction No 2 of 1996 only applies to declarations effecting subject matters that have no value attached to them or those with values that cannot be quantified. However in *Harcharan Singh* the Federal Court found that the subject matter of the claim had been identified and its value determined at RM248,500. Obviously, it was below RM250,000, and thus s. 68(1)(a) was still applicable, meaning that leave was required before an appeal could be brought to the Court of Appeal.

**[12]** As to the second question, the Federal Court held that the time for determining the current value of the subject matter of the claim (exclusive of interest) would be at the time of filing the claim. In deciding as it did, the Federal Court had in fact followed the

earlier decision of the then Supreme Court in the case of *Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 2 CLJ 68. In that case it was similarly held that the determining factor is not the amount recovered or the amount of the award handed down by the trial court but rather the amount or value claimed in the civil suit.

**[13]** Thus, we see no ambiguity with regard to the decision of the Federal Court in *Harcharan Singh*. In fact s. 68(1)(a) of the CJA clearly provides that the time for determining the current value of the subject matter of the claim (exclusive of interest) is at the time of filing the claim and not the judgment amount granted. In the instant case, it is not in dispute that the plaintiff was claiming in excess of RM250,000. As such there was no necessity for the defendant to apply for leave pursuant to s. 68(1)(a) of the CJA, even though the judgment granted against the defendant was only RM200,000.

**[14]** Since we found that leave was not required for the defendant to pursue the appeal, we accordingly struck out the defendant's application with no order as to costs. This is especially so when the notice of appeal had been duly filed at the Court of Appeal registry.